

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6728 OF 2004

1. Amrutraj Pratapji Vyas
Age : 43 years, Residing at
Anand Bhuvan, Mehataji Plot,
Behind Vasant Talkies, Bhusawal,
Dist. Jalgaon.
2. Rajendra M.Puranik
Age : 34 years,
R/o.Kulkarni Plot, Near Civil Court,
Bhusawal, Dist. Jalgaon.
3. Sanjay Ramdas Pardhe,
Age : 34 years,
R/o.Matoshri Ramabai Ambedkar Nagar,
Jamner Road, Bhusawal, Dist. Jalgaon.
4. Uday Popat Patil,
Age : 38 years,
R/o.Dr.Vinay Chaudhari Hospital,
Jamner Road, Bhusawal.
5. Rajendra P. Choudhary,
Age : 38 years,
R/o.Garud Plot,Bhusawal.
6. Parmanand Ramji Joshi,
Age : 45 years,
R/o.New Area Ward, Bhusawal.
7. Yogesh P.Sulkshane,
Age : 36 years,
R/o.Bhoite Nagar, Jalgaon.
8. Ajay Nimbaji Randhir,
Age : 27 years,
R/o.Near Mamaji Talkies,
Bhusawal, Dist. Jalgaon.

9. Dinesh Rupchand Bawaskar
Age : 32 years,
R/o.Shri Ram Nagar, Wanjala
Road, Bhusawal, Dist. Jalgaon.
 10. Babanrao Jijabrao Deshmukh,
Age : 32 years,
R/o.At Post Fulgaon.
 11. Shivaji Pundalik Patil,
Age : 32 years,
R/o.Khalwadi, Juna Satara,
Bhusawal, Dist. Jalgaon.
 12. Bhagwandas Shivaji Kale
Age : 36 years,
R/o.Z.T.C. Bhusawal,
Dist. Jalgaon.
 13. Sanjay Vinayak Mahajan,
Age : 34 years,
R/o.Gangaram Plot, Bhusawal,
Dist. Jalgaon.
- ... **PETITIONERS**

VERSUS

1. Hind Seva Mandal,
Bhusawal, through its
President, C/o.Shastri Vidya Nagar,
Shivaji Nagar, Bhusawal,
Dist. Jalgaon.
2. Shri. Sant Gadge Baba Polytechnic,
Near Z.T.C. Bhusawal, District
Jalgaon,through its Principal.
3. Joint Director of Technical Education,
Maharashtra State, Nashik Region,
Samangaon Road, Nashik.
4. Director of Technical Education,
Maharashtra State, 3, Mahapalika Marg,
Mumbai-01

5. State of Maharashtra,
Through Secretary, Higher and Technical
Education, Mantralaya, Mumbai-32

... **RESPONDENTS.**

Shri. L.V. Sangit, Advocate, holding for Shri.
V.J. Dixit, Senior Counsel, for petitioners.

Shri.S.P. Shah, Advocate, holding for Shri.
Sanjay Mundhe, Advocate, for respondent Nos.1
and 2.

Shri.Y.G. Gujarathi, Assistant Government Pleader,
for respondent Nos.3 to 5.

**CORAM: R.D. DHANUKA AND
 SUNIL K. KOTWAL, JJ.**

JUDGMENT RESERVED ON : ON 29TH AUGUST 2017

JUDGMENT PRONOUNCED ON : 8th SEPTEMBER 2017

JUDGMENT (PER R.D. DHANUKA, J.):

1) By this writ petition filed under
Article 226 of the Constitution of India, the
petitioners have prayed for writ of mandamus and
for an order and direction against Hind Seva
Mandal and Shri.Sant Gadge Baba Polytechnic,
respondent Nos. 1 and 2 herein, to disburse the
pay and allowances and extend all other service

benefits as per the the instructions issued in Government Circular/Letter dated 29th September, 1995 issued by Directorate of Technical Education, Maharashtra State, Mumbai to petitioners and also to pay the arrears of salaries in pursuance of the said circular along with the interest @ 15% per annum w.e.f. 1st September, 1995 till 19th May, 1999. The petitioners also seek writ of certiorari following the order and direction against the respondent Nos. 3 and 4 to take appropriate steps towards the disbursement of the arrears of salary and allowances to the petitioners for the period from 1st September, 1995 till 19th May, 1999 with interest @ 15% per annum accrued on the amount payable to the petitioners.

2. Some of the relevant facts for the purpose of deciding this writ petition are as follows :-

The petitioners had been working for last 7 to 8 years when this writ petition was

filed and continued to work with respondent No.1, till date and are non-teaching staff. Respondent No.1 runs 17 education institutions besides College of Engineering and Technology and Polytechnic College. Respondent No.1 also runs Shri.Sant Gadge Baba Polytechnic at Bhusawal since the academic year 1983-1984, and is having various branches namely, Civil, Mechanical, Electrical and Industrial Electronics. Respondent No.1 has closed Shri.Sant Gadge Baba Polytechnic at Bhusawal before filing of this petition by the petitioners. The provisions of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and various Rules framed thereunder are applicable to the petitioners and the respondents (In short "the said M.E.P.S. Act" and "the said Rules").

3. On 29th September, 1995, the Directorate of Technical Education, Maharashtra State issued instructions by Circular/Communication to the Managements and the office bearers of non-aided

private institutions including the technical institutions to pay to the teaching and non-teaching employees employed by such institutions, the salary, allowances, bonus, travelling allowances, medical facilities, insurance, death or retirement gratuity as per the directions issued by the Government from time to time. It is the case of the petitioners that, in view of the said circulars issued by respondent No.4, respondent No.1 was liable to pay and disburse salary on the basis of 4th and 5th Pay Commissions at that time. In consonance with the Government Policy, the petitioners made various representations to the respondent No. 1 and the authority through Teachers Association for non-aided polytechnic but of no avail.

4. The Teachers Association for non-aided polytechnic, Bhusawal and others filed writ petition bearing No.364 of 1999 against the respondent No.1 and others before this Court for payment of salary and other benefits as per the

Pay Scales prescribed by the Government relying upon the said circular dated 29th September, 1995. (Hereinafter referred to as the 'said Association'). By an order dated 23rd April, 1999, the Division Bench of this Court, directed respondent No.1 to pay salary including Dearness Allowance as per Pay Scales, prescribed by the Government in view of the fact that at the time of obtaining recognition, the College had given an undertaking to comply with all conditions including payment as per the scales prescribed by the Government. This Court recorded the statement made by the respondent No.1 that, it was not in a position to pay the salaries of teachers as per the pay scales prescribed by the Government and that the respondent No.1 was non-aided College. The 13 petitioners out of 31 petitioners in the said writ petition No.364 of 1999 were members of non-teaching staff.

5. The respondent Nos. 1 and 2 issued an advertisement and invited the applications for 55

teaching as well as non-teaching posts. In spite of the representation made by the Teachers Association, the respondent Nos. 1 and 2 proceeded to recruit the persons to the said 55 posts of teaching and non-teaching staff. In the month of June, 1999, when the teaching and non-teaching staff went to resume the duties after re-opening of the College, they were prevented by the respondent No.1 from discharging their duties and they were not allowed to enter the campus of college.

6. The said Association therefore filed a writ petition bearing No.3208 of 1999 on 21st June, 1999 against the respondent No.1 and others. By an order dated 5th July, 1999, the Division Bench of this Court granted leave to the petitioners therein, to implead All India Council of Technical Education, New Delhi as respondent No.10 to the said petition. This Court directed the Directorate of Technical Education, Maharashtra State to make an inquiry with respect to the grievances made by those petitioners in the said writ petition No. 3208 of 1999 and to submit a report

as to what steps were taken for derecognition of the institute which was not financially sound to run the institute within two weeks from the date of said order.

7. This Court directed the respondent No.2 to 5 in the said writ petition that until further orders from this Court, no new admissions be given to engineering colleges and technical schools run by respondent No.1 for the year 1999-2000. This Court noted the stand of the respondent No.1 that it was not in a position to pay salaries of the staff as per the pay scale prescribed by the Government. This Court observed that the respondent No.1 was not capable to run the technical institute including engineering college and, in these circumstances, the students, who were admitted in technical schools and engineering college would suffer. The matter was adjourned for two weeks.

8. Aggrieved by the said order dated 23rd April, 1999, passed by this Court in writ petition No.364 of 1999, the respondent No.1

filed a Special Leave Petition which was converted in Civil Appeal No.6225 of 2000. The Supreme Court of India, by an order dated 28.03.2001 observed that the order passed by this Court on 23rd April, 1999 was very cryptic order on the basis of so-called undertaking given by the employer at the time of recognition which undertaking could not be produced in the course of proceedings. It was observed that in the said order dated 23rd April, 1999 passed by this Court, all the aspects were not considered and accordingly, remanded the matter to this Court for reconsideration and redisposal of the writ petition after considering the submissions made by the rival parties namely, the Management, the employees as well as the State Government and A.I.C.T.E. expeditiously.

9. In view of the said order dated 28.03.2001 passed by the Supreme Court, the said writ petition No.364 of 1999 was re-heard by this Court. By a detailed order and Judgment dated 3rd

July, 2001, directed the respondent Nos.1 and 2 to implement the circular dated 29th September, 1995 issued by the respondent No.4 and made the rule absolute to that extent. This Court also directed respondent Nos. 1 and 2 to pay costs to the petitioners of Rs.5000/-.

10. Being aggrieved by said order and Judgment dated 3rd July, 2001, delivered by this Court, the respondent No.1 and another preferred a Special Leave petition, which was numbered as Special Leave to Appeal (Civil) No.19455/2001. By an order dated 12th April, 2002, the Supreme Court dismissed the said Special Leave Appeal. In the said order, it was observed that the Supreme Court was not inclined to interfere with the impugned direction of the High Court relating to the salaries of the teaching and non-teaching staff. The learned counsel for respondent No.1 herein made statement before the Supreme Court that it had decided to close the institution, the Supreme Court however, made it clear that it was

not inclined to examine the said decision.

11. On 30th April, 2002, the Supreme Court dismissed the Review Petition (Civil) No.806/2002 filed by respondent No.1 and another seeking review of the order dated 12th April, 2002.

12. It is the case of the petitioners that in spite of order and Judgment dated 3rd July, 2001, delivered by this Court directing respondent Nos. 1 and 2 to implement the circular dated 29th September, 1995 issued by respondent No.1 and though the Special Leave Petition and Review Petition filed by respondent Nos. 1 and 2 came to be dismissed, respondent Nos. 1 and 2 did not implement the said orders. The said Association therefore filed Civil Application bearing No.6172 in the said writ petition No.3208 of 1999 and prayed for implementation of the order passed by this Court and the Supreme Court. By an order dated 8th October, 2002, the said civil application was allowed to be converted

into a contempt petition in writ petition No.3208/1999. This Court observed that, the Court was prima-facie satisfied that there was a failure to implement the said order dated 5th July, 1999 by the respondent No.1 and thus, allowed the application of Association to convert the said Civil Application into contempt petition in writ petition No.3208/1999. This Court directed that so far as the directions for implementation of the order passed in writ petition No.3604 is concerned, the Association may move an appropriate proceedings.

13. On 28th October, 2002, this Court passed a detailed order in writ petition No.3208 of 1999 directing the Assistant Director, Technical Education, Nashik Region to submit fresh report regarding employees, who were working under the respondent No.1 for the academic year 1998-1999 onwards and to have the names (of their employees teaching as well as non-teaching) with their duties of joining, etc. The Assistant Director,

Technical Education, was directed to inquire into the new appointments, if any, made by the respondent No.1 and 2 for the academic years 1999-2000 onwards and the names of such employees along with the date of joining. This Court also directed the respondent No.1 and 2 to deposit the arrears of salary payable to the petitioners No.2 to 31 in the said writ petition No.364 of 1999 from 1st September, 1995 to 31st May, 1999 within a period of 4 weeks from the date of the said order with the Registry of this Court.

14. Pursuant to the said order dated 28th October, 2002, the Joint Director of Technical Education, visited the Polytechnic College in question i.e. Shri.Sant Gadge Baba Polytechnic, Bhusawal, and submitted a detailed report before this Court furnishing the names of all teaching and non-teaching staff and on various other issues. It is the case of the petitioners that names of all the petitioners were also found in the said list. On 29th January, 2003, this Court

admitted the writ petition No.3208 of 1999. This Court noticed that the order for deposit of the amount had not been implemented by the respondent Nos. 1 and 2. There was no application for extension of time to deposit made by the respondent Nos. 1 and 2.

15. This Court considered the report submitted by the respondent Nos. 3 and 4 and prima-facie observed that the requirements of section 3 of the said M.E.P.S. Act, had not been complied with. Respondent Nos. 1 and 2 have not implemented the directions issued to them to pay the salary of the teachers from time to time. This Court accordingly, issued notice to the respondent Nos. 1 and 2 and others to show cause as to why State Government should not be directed to invoke its powers under section 6 of the said M.E.P.S. Act, and called upon them to submit reply to the said show cause notice. This Court also recorded submissions of the learned Counsel for the said Association that on the basis of the

accounts figures in their possession, the respondent Nos. 1 and 2 was of sound financial condition and that after denying the employment to the petitioner Nos. 2 to 31 in writ petition No.364 of 1999, the Management had proceeded to recruit fresh hands and their salary was being paid regularly.

16. The respondent Nos. 3 and 4 in the said report submitted before this Court stated that the gross salary paid to the teaching and non-teaching staff of the said Shri.Saint Gadge Baba Polytechnic, Bhusawal was neither in accordance with the 4th Pay Commission nor 5th Pay Commission as specified by A.I.C.T.E. and Government of Maharashtra to all aided and un-aided Polytechnics from time to time.

17. It is the case of the petitioners that on the date of filing this petition, respondent Nos. 1 and 2 had deposited the partial amount so far the petitioners No. 2 to 31 in the said writ

petition No.364 of 1999 are concerned. In so far as the other employees were concerned, the respondent Nos. 1 and 2 did not deposit any amount.

18. It is the case of the petitioners that the actual withdrawal of the money by respective petitioners in writ petition No.3208 of 1999 was allowed to be made in the month of June, 2004. The petitioners came to know about non-deposit of any amount in so far as petitioners are concerned only in the month of June, 2004.

19. It is the case of the petitioners that since no amount was deposited in respect of the petitioners by respondent Nos. 1 and 2, the petitioners issued notice to the respondent Nos. 1 and 2 and claimed the monetary benefits in pursuance of the orders passed in writ petition No.364 of 1999 on 3rd July, 2001. However, respondent Nos. 1 and 2 did not respond to the letter addressed by the petitioners and did not

pay any amount. These petitioners accordingly, filed this writ petition on 27th August, 2004 inter alia praying for writ of mandamus and writ of certiorari, for an order and direction against the respondent Nos. 1 and 2 to disburse to the petitioners pay and allowances and other benefits with interest and an order and direction against the respondent Nos. 3 and 4 to take appropriate steps towards the disbursement of arrears of salary and allowances to the petitioners for the period from 1st September, 1995 till May, 1999 with interest @ 15% per annum.

20. On 20th July, 2000, writ petition came to be admitted. Mr.L.V.Sangit, learned counsel for the petitioners invited our attention to various annexures to the writ petition including various orders passed by this Court and the Supreme Court. It is submitted by the learned Counsel that the petitioners to this petition had been working with the respondent Nos. 1 and 2 since 1987 i.e. since last more than 7 to 8 years,

prior to the date of filing this petition. Some of the petitioners were working the year 1977. All the petitioners were members of the non-teaching staff.

21. It is submitted by the learned counsel that respondent Nos. 1 and 2 had submitted undertaking to the State Government as well as to the A.I.C.T.E. while obtaining permission from the State Government to start the said Shri. Sant Gadge Baba Polytechnic in writing that they would comply with the terms and conditions and recommendations including the conditions of providing pay scales as prescribed by A.I.C.T.E. to the teaching as well as non-teaching staff and the pay scales as recommended by the State Government from time to time.

22. It is submitted that the said undertaking given by the respondent Nos. 1 and 2 to the State Government as well as to the A.I.C.T.E. are binding on the respondent Nos. 1

and 2. Respondent Nos. 1 and 2 were thus, under obligation to follow the condition of permission and admissions and to disburse the salaries as prescribed by A.I.C.T.E. and State Government to the employees including teaching and non-teaching staff. He submits that the petitioners were thus, entitled to and were eligible for getting benefits of 4th Pay as well as 5th Pay Commission by the respondent Nos. 1 and 2, including the consequential benefits such as, bonus, gratuity, travelling allowance, medical allowance, Provident Fund, leave benefits.

23. It is submitted by learned counsel for the petitioners that under section 4 of the M.E.P.S. Act, the State Government is empowered to make rules providing for the minimum qualifications for recruitment, duties, pay, allowances, post retirement and other benefits and other conditions of service of employees of private schools. He submits that under section 16 of the said Act, the State Government is

empowered to make rules for carrying the purpose of the said Act by notification in the official gazette which includes the rules relating to the scales of pay and allowances to the teaching and non-teaching staff.

24. It is submitted by the learned Counsel that it was one of the pre-requisites under clause 3.2 of the said secondary school and under section 2(21) of the said M.E.P.S. Act for grant of recognition for any other particular schools. He submits that respondent Nos. 1 and 2 thus, were bound to comply with the instructions/circulars issued by the State Government as well as the A.I.C.T.E. directions to make payment of pay scales on the basis of 4th and 5th Pay Commission recommendations.

25. It is submitted that the said instructions issued by the Directorate of Technical Education, Maharashtra State, dated 29th September, 1995, to the Management and the office

bearers of the non-aided private institutions including the technical institutions to pay to the teaching and non-teaching employees employed by said institutions as per the rules and policies framed by the State Government was by exercising powers under section 4 read with section 16 of the said Act, and were binding on the respondent Nos. 1 and 2. He submits that the respondent Nos. 1 and 2 were even otherwise having given undertaking to the State Government and A.I.C.T.E. While applying for permission to start the said Shri.Sant Gadge Baba Polytechnic College were liable to pay the demands made by the petitioners as per said circular issued by Respondent No.4.

26. Learned Counsel for the petitioners submits that respondent Nos. 1 and 2 were not complying with these instructions/circular issued by the respondent No.4. The said Association and several others filed writ petition in this Court. He invited our attention to the orders passed by

this Court in various writ petitions. He submits that after remand of the writ petition No.364 of 1999 by order dated 28th March, 2001, passed by the Supreme Court, this Court tendered detailed Judgment on 3rd July, 2001. He submits that by the said Judgment, this Court had allowed the said petition filed by the said Association and other petitioners and directed the respondent Nos. 1 and 2 to implement the circular dated 29th September, 1995 with costs.

27. It is submitted that the said Judgment has attained finality in view of the Special Leave Petition and the review petition filed by the respondent Nos. 1 and 2 having been dismissed by the Supreme Court. He submits that the said Judgment of this Court directing the respondent Nos. 1 and 2 to implement the said circular dated 29th September, 1995 issued by the respondent No.4 was applicable to all the teaching and non-teaching staff of the respondent Nos. 1 and 2 including the petitioners.

28. It is submitted that the said Order and Judgment delivered by this Court on 3rd July, 2001, which is upheld by the Supreme Court was applicable to the petitioners and the respondents and was binding on them.

29. In his alternate submissions, the learned Counsel submits that even if the said order and Judgment dated 3rd July, 2001 delivered by this Court in the said writ petition filed by the said Association and some of the members of teaching and non-teaching staff, the petitioners being similarly situated and being members of the non-teaching staff of the respondent Nos. 1 and 2 were entitled to get benefits of said circular dated 29th September, 1995 and the said order and Judgment dated 3rd July, 2001 delivered by this Court. He submits that the respondent Nos. 1 and 2 have deliberately withheld the amount payable to the petitioners, and thus, petitioners are also entitled to claim interest @ 15% per annum

from the due date as prayed in the writ petition.

30. Learned counsel for the petitioners also invited our attention to the reports submitted by the respondent Nos. 3 and 4 before this Court and also the order passed by this Court on 28th October, 2002 and would submit that in the said report, the authorities have clearly placed on record that respondent Nos. 1 and 2 had not paid the salary and other benefits to the employees in accordance with the 4th and 5th Pay Commission. He submits that names of all the petitioners, who are parties to this writ petition are mentioned in the said report as members of non-teaching staff.

31. The learned counsel for the petitioners submits that though respondent Nos. 1 and 2 had an opportunity to file affidavit-in-reply in this writ petition, no such affidavit-in-reply has been filed by them till date. The averments made by the petitioners in this writ petition remained

uncontroverted by the respondent Nos. 1 and 2.

32. Mr.S.P.Shah, Learned Counsel for the respondent Nos. 1 and 2 on the other hand, submits that in the writ petition No.3208 of 1999 and writ petition No.364 of 1999 filed by the said Association and other petitioners in which various orders came to be passed by this Court, the petitioners were not parties. The petitioners were not even the members of the said Association. The orders passed by this Court in those petitions directing the respondent Nos.1 and 2 to implement the circular/instructions dated 29th September, 1995 issued by the respondent No.4 was thus, not binding on the respondent Nos. 1 and 2 in so far as the petitioners in this writ petition are concerned. He submits that the petitioners thus cannot seek implementation of the said Judgment. In his alternate arguments, he submits that at the most, the petitioners can rely on those orders as precedent in this writ petition.

33. It is submitted by the learned counsel that there is delay on the part of the petitioners in approaching before this Court for seeking the order and direction against the respondent Nos. 1 and 2 to implement the said circular dated 29th September, 1995, issued by Directorate of Technical Education, Maharashtra State, Mumbai by filing this petition in the year 2004. The petitioner has not explained any delay and latches in this petition.

34. The next submission of the learned counsel for the respondent Nos. 1 and 2 is that the petitioners as well as the respondent Nos. 1 and 2 are governed by the provisions of the said M.E.P.S. Act. He submits that under section 4 of the said M.E.P.S. Act, the State Government is empowered to make rules providing for the pay and allowances, etc. and for prescribing other conditions of service of the employees of the private schools under section 16.

35. Learned Counsel placed reliance on Rule 7 of the said M.E.P.S. Rules, 1981, and would submit that under the said Rules, the scales of pay for full time as well as part time teachers, heads, assistant heads, professors, teachers and the non-teaching staff and the primary schools, secondary schools, including night schools, technical colleges and junior colleges of education is as specified in Schedule-"C". He submits that under Rule 7 (II), various allowances set out therein, payable to the employees at the rate and according to the said rules have been sanctioned by the Government specifically, to the employees of the private schools. He invited our attention to Schedule-"C" and submits that the salary of the teaching and non-teaching staff working in the college including the college run by respondent No.1 are specifically prescribed under the said Schedule-"C" in part (viii). The pay scale of teaching staff is in Schedule-III.

36. It is submitted that the increase in the pay scale as well as other benefits of the teaching and non-teaching staff prescribed in Rule 7 read with Schedule-"C" can not be done by issuing such executive instructions by respondent No.4. He also placed reliance on Rule 16 (2) (b) of M.E.P.S. Act read with section 4(3) of the said Act. He submits that source of power of the respondent No.4 is only prescribed under those provisions including the rules to prescribe the pay scales and other service conditions. He submits that thus, the instructions/circular issued by respondent No.4 on 29th September, 1995 was beyond the jurisdiction of respondent No.4 and was in violation of section 4 and 16 of the Act and Rule 7 of the said Rules and thus was not binding on the respondent Nos. 1 and 2.

37. In support of this submission, the learned counsel for the respondent Nos. 1 and 2, vehemently placed reliance on the Judgment delivered by the Division Bench of this Court in

case of **Mahadev Pandurang More Vs. State of Maharashtra and others**, 2014 (15) Mh.LJ. 877 and in particular paragraph Nos.41 to 47 and would submit that unless and until the scales of pay directed to be paid by the respondent No. 4 by the said instructions/circular dated 29th September, 1995 were specified by carrying out appropriate amendment in the rules read with Schedule-"C", the said instructions/circular was not at all binding upon the respondent Nos. 1 and 2. He submits that respondent Nos. 1 and 2 thus, were bound to pay the prescribed pay scale and other benefits in Schedule-"C" of the said Rules of 1981 only and not more than the said prescribed amount. He submits that Judgment of Division of this Court in case of **Mahadev Pandurang More (supra)** is binding on this Court and also upon the parties.

38. Mr.Y.G.Gujarathi, learned Assistant Government Pleader for respondent Nos. 3 to 5 on the other hand, invited our attention to the

averments made in the affidavit-in-reply dated 9th December, 2004 filed by respondent Nos. 3 to 5 placing various documents on record and contending that the Joint Director of Technical Education was empowered to and was justified in issuing the circular dated 29th September, 1995. He placed reliance on the said M.E.P.S. Rules and also the provisions of All India Council for Technical Education Act, 1987. He submits that respondent Nos. 1 and 2 were bound to implement the said circular/instructions issued by the respondent No.4.

39. Mr.L.V. Sangit, learned counsel for the petitioners in rejoinder submits that the earlier writ petition was filed by the Union and various members of the teaching and non-teaching staff. The averments made by the petitioners in the writ petition that the petitioners were members of the said Association, are not controverted by respondent Nos. 1 and 2 by filing any affidavit in reply. He submits that in any event, this

Court had directed the Management to implement the said circular dated 29th September, 1995, and thus, the reliefs granted by this Court was not restricted only to the said Association or to the other petitioners, who were parties to this petition but to all the members of teaching and non-teaching staff including the petitioners herein. He led emphasis on the order passed by the Supreme Court on 12th April, 2002 in Special Leave to Appeal No. 19455 of 2001 observing that the Supreme Court was not inclined to interfere with the impugned direction of the High Court relating to the salaries of the teaching and non-teaching staff. In his alternate submissions, he submits, in any event, the said Judgment of this Court which has attained finality is binding on the respondent Nos. 1 and 2 in view of the identical facts.

40. Learned counsel for the petitioners invited our attention to the stand taken by the respondent Nos. 1 and 2 before this Court in the

said writ petition No. 364 of 1999 which is recorded by this Court in paragraph 18 of the said Judgment dated 3rd July, 2001. He submits that the respondent Nos. 1 and 2 itself had admitted the Role of A.I.C.T.E. under the provisions of All India Council for Technical Education Act, 1987. It was admitted by the respondent Nos.1 and 2 that in exercise of its powers, the Council had framed norms and standards for Polytechnic colleges (diploma course). In the said norms, the requirement of running the Polytechnic, the payment of salaries, etc. to staff working in the said Polytechnic or institutions were clearly stated.

41. Learned Counsel for the petitioners invited our attention to the paragraphs 18 to 23 of the said order and Judgment dated 3rd July, 2001 delivered by this Court in the said writ petition No.364 of 1999 holding that under section 4(3) of the M.E.P.S. Act, the respondent No.4 was vested with the authority to issue directions in writing

to the Management of all private schools to bring the pay scales, allowances, post retirement and other benefits of the employees on par with the rates prescribed. He submits that it is held that the respondent No.4 had authority to issue such direction to such polytechnics to implement the pay scales prescribed by A.I.C.T.E. He submits that the arguments of the learned counsel for the respondent Nos. 1 and 2 that unless and until an appropriate amendment was carried out in Schedule-"C" of the Rules of 1981, the respondent Nos. 1 and 2 could not have been directed to pay the revised pay scale or other benefits as per the recommendations of the Pay Commissions is contrary to the order and Judgment of this Court, which has been upheld by the Supreme Court.

42. In so far as the Judgment of this Court in **Mahadev Pandurang More (supra)** relied upon by the learned counsel for the respondent Nos. 1 and 2 is concerned, learned counsel for the petitioners distinguished the said Judgment on

the ground that this Court had already decided the validity of the powers exercised by respondent No.4 to issue said circulars/instructions. The said order and Judgment dated 3rd July, 2001, which has attained finality and the respondent Nos. 1 and 2 having implemented the said Judgment partly, was not brought to the notice of the Division Bench of this Court in case of **Mahadev Pandurang More (supra)**. He submits that the said Judgment of Division Bench in case of **Mahadev Pandurang More (supra)**, thus, taking contrary view is not binding on this Court and the parties being *per incuriam*.

43. In his alternate submission, learned counsel for the petitioners invited our attention to the directions issued by the Division Bench of this Court in case of **Mahadev Pandurang More (supra)** directing the State Government to initiate suitable steps to meet wage revision on lines of Government Resolution dated 21st May,

2010 binding on unaided private schools through section 16 of the said M.E.P.S. Act within 4 months from the date of this order and further directing to the respondents to pay to the petitioners therein the increased salary at the rate offered to others from December, 2013 and clarified that its receipt or payment would not prejudice the rights, defences and contentions of the parties in relation to the amended scales of pay in Schedule-"C". He submits that the State Government has now, already amended Schedule-"C" in the month of September, 2016, thereby, giving benefits of the Pay Commissions by notification dated 6th September, 2016. It is submitted by the learned Counsel for the petitioners that even otherwise, on the ground of parity, the petitioners are entitled to be paid the same pay scales what was paid to the non-teaching staff of the respondent Nos.1 and 2 as per the orders passed by this Court.

Reasons and conclusions :-

44. It is not in dispute that the petitioners had been working as members of non-teaching staff with the respondent Nos. 1 and 2 for the last several years till the respondent No.2 is closed by the respondent No.1. It is also not in dispute that the petitioners and the respondent Nos. 1 and 2 are governed by the provisions of the said M.E.P.S. Act, and the said M.E.P.S. Rules.

45. The State Government had issued Government Resolution dated 21st May, 1983 that the technical colleges including Polytechnics run by any agency, either aided or unaided were required to abide the rules and regulations issued by Government of Maharashtra or by the Directorate of Technical Education from time to time. Respondent No.1 was granted permission to open Polytechnic during the academic year 1983-1984 by an order dated 22nd July, 1983. The Government of India enacted All India Council for Technical Education Act, 1987 (In short

"A.I.C.T.E.). Under the said Act, A.I.C.T.E. grants permission to the technical colleges with the concurrence of the State Government under section 10 of the said All India Council for Technical Education Act, 1987. The said authorities are responsible for prescribing the specific norms and standards including pay scales and service conditions of the teaching staff so as to maintain the qualitative standard of education all over India. The said authority had granted permission to the respondent No.1 to start the respondent No.2 on various conditions and upon the respondent No.1 rendering an undertaking.

46. Till 1990, all Polytechnics were not within the ambit of M.E.P.S. Act. Thereafter, A.I.C.T.E. was responsible to prescribe the pay scales and other service conditions of the teaching as well as non-teaching staff in technical institutions like the Polytechnics and degree courses. On 20th September, 1989, the

A.I.C.T.E. had issued a circular prescribing the revised qualifications as well as pay scales for teachers of technical institutions including those of Polytechnics. The Government of Maharashtra consequently issued Government Resolution dated 26th May, 1992, thereby, adopting the recommendations made by the A.I.C.T.E. regarding the qualifications and the pay scales. By a Subsequent circular dated 30th December, 1999, an additional condition of the qualification had been deleted by the A.I.C.T.E.. The State Government issued Government Resolution on 27th November, 1989 for revision of pay scales of the employees in Polytechnics. On 23rd March, 1995, the State Government issued further clarification.

47. A perusal of the order and Judgment dated 3rd July, 2001, passed by this Court, indicates that the Role of A.I.C.T.E. under the provisions of the said A.C.T.I.E. Act to prescribe the conditions of pay scale of the

employees in Polytechnics has been recognized by the State Government as well as by this Court.

48. This Court has held that under section 4(1) of the M.E.P.S. Act, the State Government is empowered to make rules providing for the minimum qualifications for recruitment, duties, pay, allowances, post retirement and other benefits and other conditions of service of employees of private schools, etc. Under section 4(3) of the said Act, it is provided that if the scales of pay and allowances, post retirement and other benefits of the employees of any private schools are less than what is provided by the said rules made under sub-section (1) of section 4, the Director, shall direct in writing the Management of such school to bring the said pay scale up to the level provided by the said rules, within such period or extended period as can be specified by them. It is held that as per the section 4(4) of the said Act, failure to comply with all the directions given by the Director in pursuance of

section 4(3), it may result the recognition of the school being withdrawn after giving reasonable opportunity of being heard to the Management of the schools.

49. This Court has accordingly, held that under section 4(3) of the M.E.P.S. Act, the respondent No.4 is vested with the authority to issue directions in writing to the management of private schools to bring the pay scales, allowances, post retirement and other benefits of the employees on par with the rates prescribed. The said A.I.C.T.E. has already prescribed the pay scales in respect of the employees of the Polytechnics.

50. In the said Judgment, this Court has held that the said A.I.C.T.E. being a body created under the said Act, is is required to carry out statutory functions and it is a model agency so far as the technical education in India is concerned. The said A.I.C.T.E. is thus,

responsible to issue directions/instructions to the Management whether aided or unaided in view of the provisions of section 4(3) of the M.E.P.S. Act, read with section 3(1) of the said M.E.P.S. Act. This Court also took into consideration the affidavit-in-reply filed by the respondent No.1 in the said writ petition. It was the case of the respondent Nos.1 and 2 itself that the actual control in academic as well as in administration of the college of technical institutions, vest with All India Council for Technical Education, which is established under the provisions of the said A.I.C.T.E. Act. The norms and standards of the Technical Education, institution are set out by this Council. It is admitted by the respondent No.1 that according to the said standards, norms and standards of the technical institutions, are set up by the said Council. According to the said standards, the technical institution running diploma courses in various Engineering branches has to follow the norms in running the Polytechnic.

51. In the said order and Judgment, this Court also took cognizance of the fact that the State Government had granted permission to the respondent No.1 to open the respondent No.2 Polytechnic from the academic year 1983-84 on certain terms and conditions. This Court held that it was clearly stipulated that the Management agrees to be bound by the terms and conditions as prescribed by the State Government while granting such permission. The respondent No.1 had submitted an undertaking on 21st July, 1983 as a part of the application for recognition. The said undertaking clearly provided that the management had agreed that it was willing to and shall abide by the order and rules laid down by the department that will be laid down thereafter regarding recognition or grant-in-aid, on conduct of the institution, etc.

52. This Court after considering the said undertaking rendered by the respondent Nos. 1 and 2, held that the respondent No.1 Management was

bound by the directions/orders issued by the respondent No.4 from time to time for the conduct of the respondent No.2, Polytechnic and the term, 'conduct of institutions' would include the implementation of pay scales and other service conditions in respect of its employees.

53. In the said Judgment and order, this Court also considered various declarations given by the respondent Nos. 1 and 2 in the application for recognition and held that the Management was fully aware of their responsibility towards the salary payment and other benefits to its employees as per the pay scale prescribed by the Government or A.I.C.T.E. from time to time, and more so, Council had granted recognition to respondent No.1 on year to year basis. This Court also observed that it was not in dispute that in the academic year 2000-2001, the respondent No.1 was having number of educational institutions, wherein about 8000 students were enrolled with about 350 teaching and non-teaching employees and

with a sound base in all respects. This Court rejected the contention of the management that it had discharged its application by paying basic salary as prescribed by A.I.C.T.E. plus 40% Dearness Allowance and 10% House Rent Allowance and other statutory benefits.

54. This Court held that services of employees will be subject to such orders to be passed either by Deputy Director or Director of Technical Education or as per the provisions of the said M.E.P.S. Act and the rules made thereunder and thus, are entitled to receive the benefits so long they continue in service. This Court also held that there is no estoppel against the statutory provisions of the M.E.P.S. Act and the Rules thereunder as well as the norms laid down by the A.I.C.T.E. which have been subsequently followed by the State Government and the directions had been issued to the Management by the respondent No.4 by exercising powers under section 4(3) of the said M.E.P.S. Act. It is not

in dispute that various contentions raised by the respondent Nos. 1 and 2 in the said writ petition No.364 of 1999 filed by the said Association including the contention that the respondent No.4 could not have issued any such circular/instructions dated 29th September, 1995 has been negatived by this Court and the said Judgment has been upheld by the Supreme Court.

55. The respondent No.2 Polytechnic was not only bound to comply with the directions issued under the provisions of M.E.P.S. Act and the M.E.P.S. Rules framed thereunder, but, were also bound to comply with the directions issued by the respondent No.4 under the provisions of A.I.C.T.E. Act including the directions issued for payment of pay scale and other service conditions prescribed in respect of the staff in a Polytechnic college or schools in respect of the vacant posts under the provisions of the said M.E.P.S. Act. In our view, the submissions advanced before this Court by the learned counsel

for the respondent Nos. 1 and 2 are contrary to the law laid down by this Court in the said Judgment dated 3rd July, 2001 and the said writ petition No.364 of 1999 which has attained finality and is binding on the respondents.

56. In so far as the reliance placed by learned counsel for the respondent No. 1 and 2 on the Judgment of Division Bench of this Court in case of **Mahadev S/o.Pandurang More and Ors. Vs. State of Maharashtra and Ors. 2014 (5) Mh.LJ.J.877**, in support of his submissions that such circular dated 29th September, 1995, could not have been issued by the respondent No.4 without carrying out appropriate amendment to the Schedule-"C" is concerned, a perusal of the said Judgment clearly indicates that the Judgment of this Court in case of Teachers Association for non-aided Polytechnics and others Vs. Hind Seva Mandal and others to which the respondent Nos. 1 and 2 were parties was not brought to the notice of their Division Bench of this Court while

dealing with the case of **Mahadev Pandurang More (supra)**. The Division Bench of this Court in the said Judgment held that the Government Resolution or any other similar decision or similar circular or decision regarding pay scales not taken in the mode and manner prescribed by 1977 Act or 1981 Rules, cannot be treated as valid and binding on the Management.

57. This Court has not considered the provisions of the said A.I.C.T.E. Act in the said Judgment and also the undertaking given by the school. Be that as it may, the respondent Nos. 1 and 2 were admittedly parties to the said earlier Judgment dated 3rd July, 2001 in the writ petition No.364 of 1999 are bound by the said Judgment holding that the respondent No.4 were authorized to issue such circular which were issued under the provisions of section 4(3) read with section 16 of the A.I.C.T.E. Act. In our view, the Judgment of Division Bench of case in **Mahadev Pandurang More**, thus, would not assist

the case of respondent Nos. 1 and 2 in these circumstances.

58. In so far as the submissions of the learned counsel for the respondent Nos. 1 and 2 that the petitioners were not parties to the said writ petition No.364 of 1999 and thus, the benefits of the said Judgment can not be given to the petitioners is concerned, a perusal of the record indicates that in the said writ petition, the petitioners had prayed for a writ of mandamas for an order and direction to the respondent Nos. 1 and 2 to pay to the teaching staff including the petitioners No. 2 to 31 thereto, the pay and allowances and other service benefits such as bonus as per the instructions issued by the circular/letter dated 29th September, 1995 issued by the respondent No.4 including the arrears of pay and allowances since the dates of their official appointments.

59. It is thus, clear that the reliefs sought by those petitioners in the said writ petition was for all the teaching and non-teaching staff of the respondent Nos. 1 and 2 including the petitioners in the writ petition. Be that as it may, a perusal of the Judgment dated 3rd July, 2001 clearly indicates that by the said Judgment, respondent Nos.1 and 2 were directed to implement the said circular dated 29th September, 1995 issued by the respondent No.4 which admittedly was a direction in respect of not only the teaching staff, but also was in respect of non teaching staff which would include the petitioners herein. On perusal of the order dated 3rd July, 2001 passed by the Supreme Court in Special Leave to Appeal (Civil) No.19455 also clearly indicates that the Supreme Court while refusing to interfere with the order passed by this Court clearly recorded that said direction of this Court was relating to the salaries of the teaching and non-teaching staff.

60. A perusal of the averments made in this writ petition indicates that it is specific case of the petitioners that the petitioners were members of the said Association who were the petitioner No.1 in the said writ petition No.364/1999 which fact is not controverted by respondent Nos. 1 and 2 by filing any affidavit-in-reply. Be that as it may, this Court has issued a writ of mandamus against the respondent Nos. 1 and 2 to implement the said circular dated 29th September, 1995 issued by the respondent No.4, and thus, the petitioners herein being covered by the said circular dated 29th September, 1995 are entitled to the benefits of the said order and Judgment dated 3rd July, 2001.

61. In our view, the petitioners have rightly filed this writ petition and prayed for a direction to the respondents to implement the said circular in view of the respondent Nos. 1 and 2 not having deposited any amount in so far as these petitioners are concerned.

62. In our view, there is thus no delay in filing this petition as sought to be canvassed by the respondent Nos. 1 and 2. Petitioners to the said writ petition No.364 of 1999 are not paid the entire amount as directed by this Court and could be allowed to withdraw the part of the said amount deposited by the respondent Nos. 1 and 2 in the month of June, 2004. This petition filed by these petitioners on 27th August, 2004, thus cannot be considered as barred by delay or latches.

63. In our view, even if the arguments of the learned counsel for the respondent Nos. 1 and 2 is accepted that the petitioners were not parties to the said writ petition No.364 of 1999, and thus, no direction were issued by this Court in the said order and Judgment to the respondent Nos. 1 and 2 to pay the benefits, the pay scale as directed in the said circular in the earlier petition herein, the petitioners bring similarly situated and part of the order and Judgment

having been admittedly implemented by the respondent Nos. 1 and 2 in compliance with the circular dated 29th September, 1995, on the principles of parity of pay scale, the respondent Nos. 1 and 2 are bound to pay the same pay scale and other benefits to the petitioners which were payable to non-teaching staff of the respondent Nos.1 and 2.

64. The respondent Nos. 1 and 2 are not in a position to distinguish the Judgment and order of this Court dated 3rd July, 2001 delivered in the writ petition No.364 of 1999, which has attained finality. The respondent Nos. 1 and 2 have contended before this Court that at the most, the said Judgment dated 3rd July, 2001 can be considered as precedent in this case. In our view, the said Judgment dated 3rd July, 2001 squarely applies to the facts of this case. Not only this Court but parties to this petition also are bound by the principles of law laid down by this Court in the said Judgment and order

dated 3rd July, 2001.

65. We are of the view that the petitioners have made out a case for grant of reliefs as prayed in this writ petition. However, in so far as the rate of interest is concerned, we are of the view that interest of justice would be met with if the respondent Nos. 1 and 2 are directed to pay to the petitioners the interest @ 12% per annum with effect from 1st September, 1995 till 19th May, 1999. We, therefore, pass the following order :-

ORDER

- (I) Writ Petition No.6728 of 2004 is made absolute in terms of prayer Clause – (A) and (B).
- (II) We, however make it clear that the rate of interest is restricted to 12% per annum from 1st September, 1995 till 19th May, 1999.

- (III) We direct the respondent Nos. 1 and 2 to comply with this order and Judgment within four weeks from today.
- (IV) The respondents are directed to act on the authenticated copy of this order.
- (V) The respondent Nos. 1 and 2 shall also pay costs of Rs.15,000/- (Rupees Fifteen Thousand Only) to the petitioners No.1 on behalf of the petitioners which shall be paid by the respondent Nos. 1 and 2 within two weeks from the date of this order without fail.
- (VI) The Rule is made absolute in aforesaid terms.

(SUNIL K. KOTWAL, J.)

(R.D. DHANUKA, J.)